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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	

To: Administrative Law Judge
Richard L. Sippel

ENFORCEMENT BUREAU'S COMMENTS ON OPPOSITION OF ADAMS
COMMUNICATIONS CORPORATION TO "MOTION TO DISMISS
ADAMS' APPLICATION, OR ALTERNATIVELY, TO ENLARGE ISSUES
(ABUSE OF PROCESS)"

1. On November 22, 1999, Adams Communications Corporation ("Adams") filed its opposition to Reading Broadcasting, Inc.'s ("RBI") November 2, 1999, motion to dismiss Adams' application or, alternatively, to enlarge issues. At the request of the presiding Administrative Law Judge, the Enforcement Bureau ("Bureau") submits the following comments.

2. In its motion, RBI requested, *inter alia*, that an issue be added to determine whether Adams abused the Commission's processes by filing its application for the purpose of achieving a settlement. After reviewing the available evidence, the Bureau

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opined that absent a detailed and documented explanation from Adams regarding the circumstances surrounding its decision to challenge the WTVE(TV) renewal application, which explanation evidences a *bona fide* desire to operate channel 51 in Reading, addition of an abuse of process issue would appear appropriate.

3. In its opposition, Adams denies that it filed its application for the purpose of achieving a settlement. Adams acknowledges that a number of its principals were also principals of Monroe Communications Corporation (“Monroe”), an applicant that in 1982 had challenged the license renewal for a Chicago television station. Adams further acknowledges that Monroe ultimately dismissed its application in 1992 in exchange for a substantial payment from the licensee.¹ However, Adams notes that Monroe’s dismissal only came after Monroe had prosecuted its application for 10 years; that such prosecution had included two successful appeals to the court of appeals; and that Monroe opted to dismiss its application via a settlement only because it had concerns about its ability to offer Spanish-language programming as it had long planned to do. Adams further observes that, with respect to the settlement that ultimately occurred, Monroe was approached by the licensee. In light of the foregoing, Adams submits that nothing in Monroe’s history supports an inference that Monroe’s principals had an improper intent when the Monroe application was filed.

4. Adams goes on to state that when it filed its application in 1994 its principals were well aware that the Commission’s rules had been amended since the filing of the

¹ See Harriscope of Chicago, Inc., FCC 92I-97, released December 24, 1992; Response of Adams Communications Corporation to “Motion to Compel Disclosure of Fee Arrangements,” filed October 26, 1999.

Monroe application to preclude a for-profit settlement.² Adams further notes that, since the filing of its application, it has not sought a waiver or modification of those rules, nor has it approached RBI in order to initiate a settlement of this proceeding notwithstanding the Commission's decision in EZ. Adams declares that its intent was to prosecute its application through to a successful completion and that its principals have never discussed possible settlement because they have not contemplated seeking, or entering into, any settlement. Indeed, Adams' principal Howard Gilbert declares that RBI offered (no date was given) to pay Adams to dismiss its application but that Adams "summarily rejected the offer."

5. Finally, Adams argues that its application was filed because of legitimate concerns about RBI's programming. In this regard, Adams' principal Gilbert avers that Adams was formed in late 1993 for the purpose of challenging the renewal of television stations airing home shopping programming that was not serving any local interest. Gilbert states that in late 1993 or early 1994, Adams learned that WTVE "was providing full-time home shopping programming and had been doing so for a period of years." At this time, Gilbert understood that, although the Commission had recently determined that stations with a home shopping format should be accorded "must-carry" status on qualifying cable television systems, such stations had not thereby been relieved of their

² When Adams filed its application, the Commission's rules precluded a settlement whereby the challenger would receive money in excess of its legitimate and prudent expenses. See Section 73.3523 of the Commission's Rules. However, subsequent to the promulgation of that rule, the Commission not only has waived the rule but also announced that it would routinely waive it in the future due to the elimination of the comparative-renewal hearing process for renewal applications filed after May 1, 1995. See EZ Communications, Inc., 12 FCC Rcd 3307 (1997) ("EZ").

obligations to serve the local public interest.³ In this regard, Gilbert states he believed that WTVE's reliance on full-time home shopping programming would enable Adams to demonstrate that the licensee was not entitled to a renewal expectancy. However, Gilbert does not discuss what analysis, if any, was made of WTVE's issues/programs lists or its children's programming.^{4 5} Moreover, Gilbert acknowledges that an effort to videotape WTVE's programming prior to the filing of Adams' application went awry in that the programming actually taped was a cable home shopping channel and not WTVE. Nevertheless, Gilbert avers that, at the time, he had no reason to believe the programming was not WTVE's, and he further avers that the reports he received confirmed his belief that the station was not meeting its public interest obligations.⁶

6. Discussion. Abuse of process is a broad concept that includes use of a Commission process to achieve a result that the process was not intended to achieve or use of that process to subvert the purpose the process was intended to achieve. *See Broadcast Renewal Applicants*, 3 FCC Rcd 5179, 5199 n. 2 (1988). In this regard, the Commission has determined that an abuse of process would include the filing of an application for the primary purpose of achieving a settlement, contrary to Section 311 of

³ *See Cable TV Act of 1992 - Home Shopping Station Issues*, 8 FCC Rcd 5321, 5328 (1993) ("Home Shopping R&O").

⁴ *See* Sections 73.3526(e)(11), 73.670 and 73.671 of the Commission's Rules. Although this point is not entirely clear, Gilbert indicates that his initial review of WTVE's programming records occurred only recently. *See* Gilbert's Declaration at ¶ 13.

⁵ Pursuant to Order, FCC 99M-79, released November 24, 1999, Adams submitted to the Bureau under separate cover the attorney fee agreements for Monroe and for Adams. In this connection, the Bureau notes that both agreements provide for different fees depending on the outcome of the application.

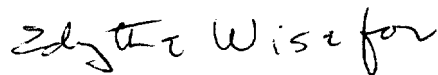
⁶ According to Gilbert, he did not become aware until September 1999 that the programming taped was not WTVE's.

the Communications Act of 1934, as amended, 47 U.S.C. § 311. *See* WWOR-TV, Inc., 7 FCC Rcd 636 (1992), *aff'd sub nom. Garden State Broadcasting Limited Partnership v. FCC*, 996 F.2d 386 (D.C. Cir. 1993). In that case, like the instant matter, key participants in the challenging applicant had received substantial sums for the dismissal of an earlier filed application shortly before filing the application at issue. Moreover, in concluding that an issue should be added in the WWOR-TV proceeding, the Commission found significant that the challenger may not have had time to monitor the renewal applicant's programming before determining that the needs of the community were not being met. WWOR-TV, Inc., 6 FCC Rcd 1524, 1525-26 n. 8 (1991).

7. In its opposition, Adams has done little to dispel the inference that it made little or no effort to assess the quality of WTVE(TV)'s service to the Reading community prior to its challenge. Indeed, the only cited basis for Adams' challenge to WTVE is Gilbert's understanding, which he supposedly obtained in late 1993 or early 1994, that WTVE was providing "full-time home shopping programming." Gilbert does not explain how he obtained this understanding, nor does he go into detail as to when he and the other Adams' principals discussed or determined that WTVE was as vulnerable to a renewal challenge as the Chicago station had been. That being said, however, the Bureau accepts as credible Gilbert's explanation as to why he believed a home shopping format was vulnerable to a renewal challenge. Moreover, the Bureau also finds acceptable Gilbert's unequivocal declaration that he (and, presumably, the other Adams' principals) clearly understood that the Commission's rules at the time Adams filed its application expressly barred the kind of settlement payment that Monroe had received for dismissal

of its application.⁷ Finally, Gilbert notes that Adams summarily rejected a settlement offer advanced by RBI, which was apparently made at a time when acceptance of such an offer would have been approved by the Commission. In sum, the circumstances surrounding the filing of the Adams application and its behavior to date appear to differ enough from the circumstances and behavior exhibited by the challenger in the WWOR-TV, Inc. case that addition of the requested issue is not appropriate.

Respectfully submitted,
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⁷ The fact that Monroe received settlement payments in excess of its expenses does little in the Bureau's view to answer the question of the *bona fides* of the Adams application. In this regard, the information now available indicates that, in the Chicago proceeding, the renewal applicant approached Monroe and that Monroe settled because of questions then recently raised about its programming prospects.

CERTIFICATE OF SERVICE

Karen Richardson, secretary of the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 1st day of December, 1999, sent by first class United States mail (or by hand) copies of the foregoing "Enforcement Bureau's Comments on Opposition of Adams Communications Corporation to "Motion to Dismiss Adams' Application, or, alternatively, Motion to Enlarge (Abuse of Process)"" to:

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